IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 435 OF 2006

SHRI LUCAS CERIACO FELIX FERNANDES AND ANR., ...Petitioners

Versus

MR. MARCELINO TADEU BENJAMIN FERNANDES AND 32 ORS., ...Respondents

Mr. Carlos A. Ferreira,Advocate for the petitioners.

Mr. V. Menezes, Advocate for the respondents.

Coram:- J. N. PATEL, J.

Date:- 13th December, 2006

P.C.

1. Heard.

2. It is submitted by the learned Counsel for the petitioners/original defendant no.1 that the petitioners be given an opportunity to place on record medical case papers to justify the delay in filing written statement. It is submitted that in the application filed under section 151 of C.P.C. though it has been specifically stated no documents (medical case papers) in support of the same was filed, and therefore the Trial Court did not accept the explanation offered by the petitioners and rejected his application.

The learned Counsel for the respondents/original plaintiffs submits that it is a case of gross delay which has not been explained and the Trial Court was justified in rejecting the application by observing that the petitioners have failed to make out an exceptional case on permitting them to file written statement beyond the period of limitation.

In the opinion of this Court, a fair opportunity can be granted to the petitioners to furnish before the Trial Court medical case papers to explain the delay in filing the written statement, as it is the contention of the petitioners that the petitioner no.1 had suffered Heart Attack and was in ICU for many days and since then has been under complete bed rest, for which the medical case papers would be able to justify the delay.

Therefore, this Court quash and set aside the impugned order with liberty to the petitioners to file medical case papers in support of his contention. The parties to appear before the Trial Court on 10.1.2007, and on that day the petitioners would file all the necessary medical case papers and furnish a copy of the same to the opponent. The Trial Court is directed to hear the parties afresh on the application filed by the petitioners under section 151 of C.P.C. and then decide the matter on merits and in case the petitioners are able to satisfy the Court that he was prevented from filing written statement due to exceptional circumstances beyond his control, the Trial Court may permit him to file written statement which is already tendered alongwith the application.

The petition stands disposed of accordingly.

J. N. PATEL, J.

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